purpose of trade or advertisement. The decision of the New York court, therefore, in subordinating the right of privacy to the doctrine of the freedom of the press, and extending this doctrine to include motion pictures of the character described, is significant. It has been held by the Washington court that the publication, in a newspaper, of the photograph of a young girl, in connection with an article stating that her father was to be arrested, was not actionable by the girl.[17] But in Washington the right of privacy has not been before the courts in any reported case; so it cannot be determined whether this decision raises the freedom of the press above the right of privacy, or repudiates the right entirely.

It is conceded in all comment upon the subject, that "the right of privacy does not prohibit any publication of matter which is of public or general interest";[18] and so, on this ground, the decision in *Humiston v. Universal Film Mfg. Co.*[19] seems to be in conformity with the now existing common law conception of the right of privacy.

S. B. R.

JUDICIAL RATE FIXING.—That the fixing of rates and charges of public utilities is a legislative function is so well accepted law that it may no longer be questioned. This has been enunciated by countless decisions throughout the United States.[1] This principle, however, is limited in the decisions by the requirement that any legislative action or regulation by a utility as to rates must be subject to judicial review as regards its compliance with constitutional limitations, such as the property deprivation clauses in the Fifth and Fourteenth Amendments, or law imposed limitations, such as the reasonable rate doctrine. Further in all these decisions the question has always been whether a rate, actually in effect, fixed by the legislature or by the utility, was unconstitutionally low or unreasonably high. It seems that no court, prior to a recent decision in New York,[2] has had occasion to pass directly upon an application to it to fix a reasonable rate in advance[3] as incidental relief from a confiscatory statute. In the first case[2] where this problem has arisen, the oft-expressed limitation of the judicial function is resolutely upheld. The decision was reached, moreover, in spite of the fact that the court was thereby unable to afford a utility suffering from an admitted hardship any adequate relief.

[17] Hillman v. Starr Pub. Co., 64 Wash. 691, 117 Pac. 594 (1911).

[18] 4 Harvard Law Review 214.

[19] *supra.*

[1] Western Union Tel. Co. v. Myatt, 98 Fed. 335 (1899); Minnesota Rate Cases, 230 U. S. 352 (1912); Water Works v. San Francisco, 82 Cal. 286, 22 Pac. 910 (1890).

[2] Bronx Gas & E. Co. v. Public Service Commission, 108 Misc. Rep. 204, 178 N. Y. S. 218 (1919).

[3] In an extended review of the cases involving rates no flat decision was found involving this point. Many in dicta laid down the rule as to the separation of the judicial and legislative function. Further no mention of a decision on this point was to be found in Mr. Bruce Wyman's exhaustive treatise on Public Service Companies, §§1400–1406.

The Bronx Gas and Electric Company, finding that the greatly enhanced operating costs of post-bellum conditions necessitated an increase in revenue, petitioned the Public Service Commission for permission to fix a new schedule of charges, raising the unit charge from one dollar per thousand cubic feet of gas to one dollar and fifty cents. This petition was dismissed on the ground that the commission had no power to authorize charges greater than one dollar per thousand.[4] Thereafter, the court of last resort of the state of New York decided, in a similar case, that the commission had no power to deal with rates above statutory maximums, even when such statutes had been adjudged confiscatory and unconstitutional.[5] The gas company then filed a new schedule of charges, duly publishing it in compliance with statutory requirements.[6] Thereafter, various consumers instituted proceedings against the gas company before the Public Service Commission to procure a reduction of the rates so filed. Under these circumstances the gas company brought a bill for an injunction to restrain the Public Service Commission, certain public officials, and all its consumers from interfering with the gas company in the collection of a price of one dollar and fifty cents or such other price as the court might deem reasonable. In addition the company prayed that certain price-fixing statutes be declared confiscatory and unconstitutional. The court granted an injunction *pendente lite* restraining the enforcement of these statutes, but flatly refused to consider the reasonableness of the rate proposed or to fix a reasonable rate. This decision was reached in spite of the insistence of the gas company that such refusal would leave it without any recourse for relief to any governmental agency, except a legislature not in session. Under similar circumstances, such a condition had been found to result by Mr. ex-Justice Hughes, while sitting as referee.[7]

The refusal of the court itself to fix a rate seems thoroughly in accord with the trend of all prior adjudications. Such a function is exclusively a legislative one.[8] Nevertheless, it seems that the court could very well have considered the rate proposed by the gas company and reached a conclusion as to its reasonableness. Such a decision would not have been rate fixing by the courts but, on the contrary, would have been merely an adjudication, in advance, of a problem that would certainly be brought up and, in fact, of one that was already the subject of litigation.

[4] Laws N. Y. 1906, t. 125, fixing $1.00 per thousand cubic feet as the maximum charge for gas; Consol. Laws N. Y., c. 48, Art. 4, §72, granting the Public Service Commission certain general powers and the specific power to " . . . within lawful limits . . . fix maximum price of gas . . . not exceeding that fixed by statute."

[5] People *ex rel* Municipal Gas Co. v. Public Service Commission, 224 N. Y. 156, 120 N. E. 132 (1918).

[6] Consol. Laws N. Y., c. 48, Art. 4, §66, sub-sect. 12.

[7] Brooklyn Borough Gas Co. v. Public Service Commission, 17 State Dept. Rep. 81 (N. Y. 1918).

[8] Note 18 L. R. A. N. S. 713; note L. R. A. 1915 C. 261.

Such a decision would have been in the nature of a Bill of Peace to avoid a multiplicity of actions already pending, where only a single question was raised and all the parties involved were in privity of interest.[9] It would be a highly appropriate method of avoiding a multiplicity of separate actions at law, and a sound modern mode of settling the rights of the parties, until such time as the legislature should have straightened out the difficulty by repealing the restrictive rate statute and either given its commission full powers in the matter or prescribed a new legal maximum, constitutional in amount. The adoption of such a policy by the court would have been thoroughly in accord with the policy of the legislature in enacting Public Service Commission Laws for the purpose of preventing rate problems from coming into judicial existence, rather than attempting to remedy them after they have reached a critical stage through deferring action until the last possible moment. Moreover, from a practical viewpoint, it seems like rather loose reasoning, difficult to support, to hold that it is improper for a court to determine, in a single equitable action with all the interested parties in court, the reasonableness of a rate, which has been proposed, filed, and advertised by a utility before any serious damage arises, while it is one of the venerable common law procedures for a court to pass upon the reasonableness of a rate charged by a utility in multiple suits by consumers to recover alleged excesses in charges. Further, it is doubtful if the authorities really uphold any such general limitation of the judicial function. In the language of Hook, J., in one of the leading cases on the topic:[10] " . . . to prescribe a tariff of rates and charges is a legislative function; to determine whether existing or prescribed rates and charges are unreasonable is a judicial function." It would seem that a rate in such condition as was the advanced schedule of the gas company in question was a sufficiently existing rate to come within the wording of such a decision as the above. The New York Court states: " . . the judicial power does not extend to the fixation of a rate, and by whatever term this relief is denominated, it would ultimately result in the determination of a court that the specific rate, the interference with which is sought to be enjoined was a reasonable rate."[11] Is not such a determination, very distinctly, a judicial question in many early and modern cases?[12]

G. B.

[9] Montgomery Light Co. v. Charles et al. 258 Fed. 723 (1919); 68 U. of P. Law Rev. 167.

[10] Western Union Tel. Co. v. Myatt, 98 Fed. 335 (1899).

[11] 108 Misc. Rep. 182, 178 N. Y. S. 174 (1919).

[12] For a number of pertinent discussions of war and post-war problems of Public Utilities and Public Service Commissions see Lecture before Assoc. of the Bar of the City of New York by George S. Coleman, March 29, 1916; lecture before Assoc. of the Bar of the city of New York by William D. Guthrie, April 5, 1916. 23 Pa. Bar. Assoc. Reports 292 (1917); 43 Am. Bar. Assoc. Reports 554 (1918); 43 Am. Bar Assoc. Reports 567 (1918); 64 Univ. of Penna. Law Rev. 1, 151, 270.